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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
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12 **DAVID ALLEN LUCAS,**

13  
14 Petitioner,

15 v.

16 **RON DAVIS, Warden, California  
State Prison at San Quentin,**

17 Respondent.  
18

15cv1224 GPC (WVG)

**DEATH PENALTY CASE**

**ORDER ON STATEMENT OF THE  
PARTIES REGARDING  
EXHAUSTION**

19 Based upon the stipulation of the parties, the Court finds that the following  
20 claims and/or subclaims in the Petition for Writ of Habeas Corpus filed on  
21 November 22, 2016, are unexhausted: Claims 10.D, 12, 13.B.2, 13.B.5, 13.B.6,  
22 35.M, 50.H, 50.L, 50.M, 52, and 53. The Court takes the parties' position  
23 statements regarding the exhaustion status of Claims 2.E.7 and 7.E.1 under  
24 submission and will render a decision on the exhaustion status of those claims  
25 concurrent with a decision on the stay and abeyance issue.

26 In addition, the Court adopts the parties' proposed schedule for resolving  
27 procedural matters related to the Petition:  
28

1           1.     Within 30 days of the issuance of this Order, Petitioner shall file his  
2 motion for a stay so that he may present his unexhausted claims to the state court.  
3 *See Rhines v. Weber*, 544 U.S. 269, 273-78 (2005) (affirming the authority of  
4 district courts to stay, rather than dismiss, mixed petitions governed by AEDPA  
5 deadlines).

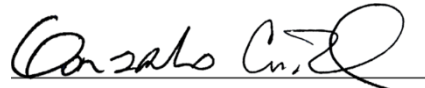
6           2.     Within 14 days of Petitioner filing his motion for a stay, Respondent  
7 shall file any opposition to the motion for a stay.

8           3.     Within 14 days of the filing of Respondent's opposition to the motion  
9 for a stay, Petitioner shall file any reply in support of the motion for a stay.

10          4.     Unless otherwise ordered by the Court, the above motions will be  
11 decided on the pleadings.

12 IT IS SO ORDERED.

13 Dated: January 17, 2017

  
Hon. Gonzalo P. Curiel  
United States District Judge